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Filed: July 12, 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ANDRX LABS, LLC
Junior Party
(U.S. Patent 6,869,615),

v.

ASTRAZENECA AB
Senior Party
(U.S. Application 10/620,000).

Patent Interference No. 105,533 (MPT)
(Technology Center 1600)

JUDGMENT - ADVERSE - Bd. R. 127(b)

1
2 Before: Lee, Medley and Tierney, *Administrative Patent Judges*.
3
4 Tierney, *Administrative Patent Judge*.
5
6 Andrx Labs (“Andrx”) has conceded priority of invention as to the
7 subject matter of Count 1, the sole count in interference but reserves the
8 right to raise all challenges and defenses in any other proceeding against
9 Astra’s involved patent application. (Andrx Concession on Priority, Paper

26). To the extent Andrx's concession attempts to avoid interference estoppel, we direct Andrx's attention to *Shustack v. Szum*, 78 USPQ2d 1566 (Bd. Pat. App. & Int. 2005) and *Eli Lilly and Co. v. Cameron*, 61 USPQ2d 1863 (Bd. Pat. App. & Int. 2001).

It is:

ORDERED that judgment on priority as to Count 1, the sole count in interference (Redeclaration, Paper 22), is awarded against Junior Party Andrx.

FURTHER ORDERED that Junior Party Andrx is not entitled to claims 1-9, 20-24 and 26 of U.S. Patent 6,869,615, all of which correspond to Count 1.

FURTHER ORDERED that a copy of this paper shall be made of record in the files of Andrx, U.S. Patent 6,869,615 and AstraZeneca, U.S. Application 10/620,000.

FURTHER ORDERED that the parties' attention is directed to 35 U.S.C. §135(c) and Bd. R. 205.

/Jameson Lee/)

JAMESON LEE)

Administrative Patent Judge)

/Sally C. Medley/)

SALLY C. MEDLEY)

Administrative Patent Judge)

BOARD OF PATENT

APPEALS AND

INTERFERENCES

/Michael P. Tierney/)

MICHAEL P. TIERNEY)

Administrative Patent Judge)

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2
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